

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE MOUNTAIN WEST FARM
7 BUREAU

8
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,
10 ORDER, AND MEMORANDUM OPINION

11 These informal contested case proceedings were filed before the Commissioner
12 of Political Practices (Commissioner) to consider the appeal of the principal
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306,
14 the principal appealed the Commissioner's assessment of a civil penalty resulting
15 from its late filing of two lobbying disclosure reports. The principal filed a written
16 Waiver of Hearing waiving its right to an in-person hearing, and submitted a written
17 statement for the Commissioner's consideration.

18 Based on the written submissions of the principal, the documents of record in the
19 Commissioner's file, and the applicable law, the Commissioner makes the following
20 findings of fact, conclusions of law, and order.

21 **FINDINGS OF FACT**

- 22 1. The Mountain West Farm Bureau is a principal registered with the Commissioner.
- 23 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
24 it into law. The law took effect on February 18, 2003. House Bill 38, now codified
25 at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any
26 person who fails to file lobbying disclosure reports within the time required by law.
- 27 3. The February 2007 lobbying disclosure report for the Mountain West Farm
Bureau was required to be filed no later than March 15, 2007, and the post-Session 2007
lobbying disclosure report was required to be filed no later than May 29, 2007.

1 4. On May 16, 2007, the office of the Commissioner sent emails to all
2 principals, including the Mountain West Farm Bureau. The email advised principals
3 that a post-Session 2007 lobbying disclosure report was required to be filed no later
4 than May 29, 2007. The email referenced the appropriate form that was required to
5 be filed, known as a form L-5A, and noted that the form was available for download
6 on the Commissioner's website. Citing provisions of 5-7-208(4), MCA, the email
7 stated: "A report must be filed in this office even though neither lobbying nor
8 incurring of lobbying expenses may have occurred."

9 5. Form L-5A indicates that if a principal spends \$5,000 or more in a calendar
10 month, a principal must file a report by the 15th day of the calendar month
11 following the month in which the expenses were paid or incurred. Mountain West
12 Farm Bureau filed a monthly L-5A for February on June 14, 2007 that reported
13 \$6012.58 in lobbying expenses.

14 6. The Mountain West Farm Bureau failed to file its L-5A on or before the
15 respective due dates.
16

17 7. On May 30, 2007 and June 15, 2007, the Commissioner sent letters via email
18 to Carey Bertsch stating that L-5A reports were due by February 15, 2007 and May
19 29, 2007, respectively, but had not been received. The letters stated that a civil
20 penalty started being assessed on February 16, 2007 and May 30, 2007, respectively,
21 at \$50 per day, and would continue until the reports were filed or until the penalty
22 amount reached \$2,500. The letters urged the principal to fax the delinquent reports
23 immediately, followed by a hard copy.
24

25 8. On June 14, 2007, the principal filed both reports. Because the reports were
26 filed more than fifty business days and twelve business days late, respectively, fines
27 of \$2,500 in the first instance and \$600 in the second were assessed.

9. The Mountain West Farm Bureau requested a hearing to contest the civil penalties. The Commissioner issued a Notice of Agency Action and Opportunity for Hearing on August 9, 2007. The Mountain West Farm Bureau filed a written Waiver of Hearing and submitted a written statement for the Commissioner's consideration.

10. In a written statement Carey Bertsch asked on behalf of the Mountain West Farm Bureau that the penalty be reduced or waived. He stated that the late filing was an error and that he failed to read the instructions and the reporting requirements. He further stated that he was ignorant of the applicable law.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

Civil penalties for delays in filing -- option for hearing --

suspension of penalty. (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the penalty. § 5-7-306(3), MCA.

4. A principal who spends \$5,000 or more in a calendar month must file a report by the 15th day of the month following the month in which the expenses were paid or incurred. § 5-7-208(2)(b), MCA

5. § 5-7-208(2), MCA, requires a lobbying disclosure report to be filed with the Commissioner “no later than 30 days following adjournment of a Legislative Session,” and the report must include “all payments made during the session, except as previously reported.” § 5-7-208(4), MCA.

1 6. Principal authority Carey Bertsch, writing on behalf of Mountain West Farm
2 Bureau, did not provide testimony or evidence establishing any factors or
3 circumstances in mitigation that would justify reduction of the civil penalty. Short of
4 filing a district court action, which can be very expensive, the automatic civil
5 penalty for late filers remains an effective and necessary enforcement mechanism.

6
7 **MEMORANDUM OPINION**

8 Information offered in a written statement by Carey Bertsch states that late filing
9 of the report was an error and a result of ignorance of the filing requirements. A
10 claim of ignorance or confusion, standing alone, generally has no bearing on the
11 requirement for timely filing of a lobbying report, and is not a sufficient basis for
12 reducing or waiving a civil penalty.

13 I urge principals to carefully review and understand the statutory filing
14 requirements to ensure that they comply with the law and to avoid the assessment of
15 civil penalties in the future.

16 **ORDER**

17 THEREFORE, IT IS HEREBY ORDERED that the Mountain West Farm
18 Bureau shall pay civil penalties of \$2,500 and \$600 to this office no later than
19 October 15, 2007.

20 DATED this 12th day of September, 2007.

21 

22
23 Dennis Unsworth
24 Commissioner of Political Practices

25 **NOTICE:** This is a final decision in a contested case. You have the right to seek
26 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-
27 4-701 through 2-4-711.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT,
CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Carey Bertsch
Mountain West Farm Bureau
PO Box 1348
Laramie WY 82070

DATED: September 12th, 2007

Mary Baker
Program Supervisor